IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1968 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DIPAK VALLABHBHAI KOLI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1968 of 2003

MS SUBHADRA G PATEL for Petitioner No. 1

MR PRADIP BHATE,AGP for Respondent No. 1-3

CORAM : MR.JUSTICE KSHITIJ R.VYAS

Date of decision: 22/05/2003

ORAL JUDGEMENT

1. The petitioner, in this petition under Article 226 of the Constitution of India,has challenged the order of detention dated 19.11.2002 passed by the Commissioner

of Police, Rajkot City, the respondent no.2 herein. The petitioner is detained under section 3(1) of the Gujarat Prevention of Anti-social Activities Act, 1985 (in short 'the Act'). In the grounds of detention of even date supplied to the petitioner, the detaining authority has placed reliance on two prohibition cases against the petitioner which are at the stage of investigation. Besides these two cases, the detaining authority has also relied upon two incidents alleged to have taken place on 12.10.2002 and 29.8.2002. Statements of two witnesses with respect to the said two incidents were recorded. However, their identity was not disclosed to the detenu while exercising powers under section 9(2) of the Act. Considering the above material, the detaining authority has recorded a finding that the detenu being a bootlegger person within the definition of section 2(b) of the Act, with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, detention of the petitioner is necessary and, therefore, while exercising powers under section 3(2) of the Act, the order of detention has been passed.

2. The learned Counsel for the petitioner has raised many contentions while challenging the order of detention. However, it is not necessary for me to deal with each and every contention in view of the fact that the petition is required to be allowed on the ground of delay in considering representation. Learned Counsel for the petitioner invited my attention to the representation dated 28.1.2003 addressed by the mother of the detenu to Police Commissioner, Rajkot City demanding copies of certain statements of witnesses recorded under section 161 of the Code of Criminal Procedure and the FSL report. In the submission of learned Counsel, though the FIR mentions the name of witness i.e. Kishore Yogendra, a copy of the same has not been supplied to the petitioner. The respondents have not filed the reply.

3. Learned AGP Mr. Bhate has shown the file of the Commissioner of Police as well as the Home Departent, State Government. On perusing the said file, it appears that the Office of the Commissioner of Police received the representation dated 28.1.2003 on 30.1.2003. The Commissioner of Police informed by communication dated 1.2.2003 that he received the said representation on 31.1.2003. He further stated that since no reliance is placed on the statements of witnesses as stated in the representation, there is no question of supplying the copy thereof to the detenu. However, a copy of the FSL report is forwarded to the detenu. He has further stated that the original representation was sent to the State

Government as well as copy of it to the Secretary, Advisory Board constituted under PASA, Gandhinagar. Even though the original representation was sent to the State Government, no material is produced to show as to on which date, the said representation was received by the State Government. From the file of the State Government, it appears that the representation of the mother of the detenu dated 28.1.2003 was rejected on 14.2.2003. The State Government has not explained this inordinate delay of about 14 days in considering the representation. In absence of any explanation in that behalf, I am of the opinion that the said delay is unreasonable which vitiates the continued detention of the detenu.

4. In the result, the petition is allowed. The impugned order of detention dated 19.11.2002 passed against the detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case.

Rule is accordingly made absolute with no order as to costs. Direct Service.

(Kshitij R.Vyas,J.)

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